and listed 10 major corporations that, with the passage of this legislation, would have saved $20 billion in liability—$20 billion that they would otherwise have to pay to victims of asbestos exposure around America. To say that everyone opposing this bill was a special interest but 10 companies that were $20 billion ahead if this bill passed were not special interests defies a rational explanation.

I would also add that I think we have to consider the fact that when we come down to consider this bill, there is going to have to be give and take on both sides, and I hope we can reach that point. Those in the legal community, as well as those who represent the businesses and insurance companies who have stakes in this fight, have to be willing to give some ground and to work toward compromise.

I came to Congress years ago, and when I arrived the first issue with which I was confronted was asbestos. It is still here today and there are more victims today and we have to find a reasonable way to help those victims.

I am heartened by Senator CORNYN of Texas, who has been willing to come to this floor and talk about the medical criterion alternative. I don't know if we can reach an agreement, but I sure want to try. I have said to my colleagues on this side of the aisle who did not agree with the disposition on the last vote that we should put our heads together and see if we can come out with a reasonable answer to this challenge we face. I sincerely hope that can be done.

I do have to say I wish the first bill we were considering would not have been this so-called Armageddon of the special interest groups. Wouldn't it have been much better for us to have considered Medicare prescription drug Part D reform when we have millions of seniors across America struggling to understand this complicated system, wrestling with plans that may offer the drugs that they need for their life-and-death situations; wanting the pharmacies they have always trusted to be included; hoping that they can pay the price of this plan?

I hear from these people every day. You would think that Members on both sides of the aisle would be receiving these phone calls and, if they have, you wonder why that was not the first bill that was brought up. It would have been a reasonable thing. Some have even suggested we should have brought up ethics reform before we did anything else, and we have introduced a bill on the Democratic side that will try to move toward significant ethics reform. I hope those on the Republican side who feel the same way will join us and make their own suggestions. But shouldn't we move to that legislation? That may not be popular with some of the power brokers in this town, but if we want to restore the confidence of the American people in Congress and the people who work here, it certainly ought to be high on their agenda.

There again is another issue that we have not considered—ethics. Medicare; prescription drugs Part D; addressing the issue of LIHEAP—that's the Low Income Heating and Energy Assistance Program—are critically important across the Nation. We left that undone—underfunded from last Congress. I think there is bipartisan support—I know there is—for us to return to that issue, another one which will help a lot of needy families, vulnerable Americans across our Nation who are faced with staggering and record heating bills. That, again, is an issue that does not have a special interest constituency, but it is certainly one that families are concerned about across our country.

I know we are not ready to bring up the issue of health care because we need to do some work on it. For 5 years, we have done virtually nothing and the cost of health insurance has gone up, the coverage has gone down, people are more vulnerable today than they were a few years ago and more people are uninsured. We ought to be talking about reasonable bipartisan efforts to deal with health insurance and making it more affordable and more accessible for every American family. That is something that could be done.

When some come to the floor and say: This is the No. 1 issue facing Congress, the people I represent think there are other issues far more important, issues that relate to their everyday lives and the livelihoods of their families. I hope we can return to those issues.

We have expended a lot of effort and energy on this issue. Perhaps by working on a bipartisan basis we can find a way through this. But in the meantime, let's take up some of these equally important, if not more important, issues for families across America.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. FRIST. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. FRIST. Mr. President, I ask unanimous consent there now be a period for morning business with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

HONORING OUR ARMED FORCES

SPECIALIST ALLEN KOKESH, JR.

Mr. JOHNSON. Mr. President, today I pay tribute to Specialist Allen Kokesh, Jr. who died on February 7, 2006, from injuries sustained while serving in Iraq. He was a member of Charlie Battery, First Battalion 147th Field Artillery Brigade of Yankton.

Specialist Kokesh was one of five South Dakota National Guard members involved in a roadside bomb attack on December 4, 2005, en route to Baghdad. Two soldiers were killed in the immediate aftermath, Sergeant First Class Richard Schild and Staff Sergeant Daniel Cuka. Specialist Kokesh suffered severe wounds, and after being medically evacuated out of Iraq, he was transferred to the Brook Army Medical Center at Fort Sam Houston in San Antonio, TX.

Sadly, Specialist Kokesh didn't recover from his wounds and died after developing severe complications. He was a graduate of Yankton High School and is remembered as a scholar athlete. In fact, he was a member of the Yankton High School championship football team that won the 2002 Class 11AA State title. The leadership skills Specialist Kokesh demonstrated during high school were clearly evident when he joined the South Dakota National Guard that same year. He even successfully convinced a fellow classmate, and member of his football team, to join the National Guard the following year.

While I am deeply saddened by the loss of any military member serving in defense of our great Nation, the loss of the brave soldiers in the 147th hits close to home. My oldest son, Brooks, served in that unit prior to joining the Army as an enlisted soldier with the 101st Airborne Division. On behalf of my entire family, I extend our heartfelt condolences to Specialist Kokesh's family and friends.

Specialist Kokesh's commitment to his fellow members of the South Dakota National Guard, as well as all those who served in uniform with him, is a testament to the strength of his character and the family that instilled in him these values. His dedicated service to our grateful Nation will never be forgotten.

DEFENSE AUTHORIZATION, 2006

Mr. LEVIN. Last week, Senator KYL placed a statement in the CONGRESSIONAL RECORD regarding the Graham-Levin amendment, which was enacted last year as section 1405 of the National Defense Authorization Act for Fiscal Year 2006 and as section 1005 of the Detainee Treatment Act of 2005, as included in the Department of Defense Appropriations Act, 2006. Senator KYL and Senator REID cosponsored the Graham-Levin amendment in the Senate.

Senator KYL argues that this provision was intended to retroactively strip the Federal courts, including the Supreme Court, of jurisdiction over pending cases. Senator KYL's statement attached a January 18, 2006, letter from Senator KYL and Senator GRAHAM to Attorney General Gonzales, which makes the same argument.

As I stated when the Graham-Levin amendment was before the Senate and

reiterated when the Senate adopted the conference report containing the legislation, this is not the case. The statute that we enacted does not retroactively strip the Supreme Court and other Federal courts of cases over which they had already assumed jurisdiction at the time the statute was passed.

I do not believe that the unexpressed intentions or after-the-fact statements of Senators—Senator KYL, myself, or anyone else—can change the facts or the legislative history that existed at the time Congress acted on a piece of legislation. The relevant considerations are the language of the law itself, the changes that were made to that law as it went through the drafting process, and what was clearly stated before the bill was voted on by the Senate. I make this statement today for the sole purpose of reiterating that history.

While section 1405(e)(1) provides that ''no court, justice, or judge shall have jurisdiction to hear or consider an application for a writ of habeas corpus,'' the applicability of this language to pending cases is addressed in a separate provision—section 1405(h)—the structure and history of which make it clear that the courts are not stripped of cases over which they have already assumed jurisdiction.

Section 1405(h) clearly provides that only one portion of the act applies to pending cases: sections (e)(2) and (e)(3), which govern direct appeals from final decisions by military commissions and CSRTs. The rest of the statute becomes effective ''on the date of enactment,'' which, as Justice Scalia has pointed out, ''is presumed to mean 'shall have prospective effect upon enactment,''' Landgraf v. USI Films.

At CONGRESSIONAL RECORD page S970, Senator KYL argues that the original Graham amendment was never ''modified to carve out pending litigation.'' He is incorrect. In fact, the amendment was modified, and it was modified for the precise purpose of carving out pending litigation.

The original Graham amendment specified that all provisions—including the restrictions on habeas petitions—applied to pending cases. On November 10, 2005, the original Graham amendment was debated and adopted by the Senate by a vote of 49–42. At that time, I objected to the Graham amendment's provision stripping jurisdiction in pending cases. In fact, I explicitly urged at CONGRESSIONAL RECORD page S12,663 that we not adopt this amendment, in part, because ''It would eliminate the jurisdiction already accepted by the Supreme Court in Hamdan.''

Because of my concerns, after the original Graham amendment was adopted, I began working on a revised version of the amendment, which became known as the Graham-Levin amendment. This new version removed the language applying the habeas restrictions to pending cases, and instead limited its retroactive effect only to the standards applicable to direct appeals of final determinations that may have been made by CSRTs or military commissions.

On November 14, 2005, Senator GRAHAM and I introduced this new version to the Senate together. In introducing the new Graham-Levin amendment, Senator GRAHAM did not specifically address the issue of the amendment's effect on pending cases before yielding the floor to me. I did address the issue. In particular, I explained to the Senate that one of the principal reasons that so many of us voted against the prior version of the amendment was its effect on pending cases and that this problem had been addressed in the Graham-Levin amendment that was then before us. I stated at CONGRESSIONAL RECORD page S12,755:

> The other problem which I focused on last Thursday [November 10] with the first Graham amendment was that it would have stripped all the courts, including the Supreme Court, of jurisdiction over pending cases. What we have done in this amendment, we have said that the standards in the amendment will be applied in pending cases, but the amendment will not strip the courts of jurisdiction over those cases. For instance, the Supreme Court jurisdiction in Hamdan is not affected. . . . I cosponsored the Graham amendment with Senator Graham because I believe it is a significant improvement over the provision which the Senate approved last Thursday. . . . The direct review will provide for convictions by the military commissions, and because it would not strip courts of jurisdiction over these matters where they have taken jurisdiction, it does, again, apply the substantive law and assume that the courts would apply the substantive law if this amendment is agreed to. However, it does not strip the courts of jurisdiction.

Senator GRAHAM took the floor again immediately after I concluded my explanation of what our new amendment accomplished. He did not disagree with my statement about the effect of the revised bill on pending cases anywhere in his remarks. Indeed, neither Senator GRAHAM nor Senator KYL said anything at that time to contest my very clear statement that the new amendment did not retroactively strip the courts of jurisdiction over pending cases.

When the Senate approved the Graham-Levin Amendment by a vote of 84 to 14 on November 15, 2005, I explained again at S12,802 that our amendment would not strip the courts of jurisdiction over pending cases:

> The Graham-Levin-Kyl amendment would not apply the habeas prohibition in paragraph (1) to pending cases. So, although the amendment would change the substantive law applicable to pending cases, it would not strip the courts of jurisdiction to hear them. Under the Graham-Levin-Kyl amendment, the habeas prohibition would take effect on the date of enactment of the legislation. Thus, this prohibition would apply only to new habeas cases filed after the date of enactment. The approach in this amendment preserves comity between the judiciary and legislative branches. It avoids repeating the unfortunate precedent in Ex parte McCardle, in which Congress intervened to strip the Supreme Court of jurisdiction over a case which was pending before that Court.

Again, neither Senator GRAHAM nor Senator KYL offered a contrary interpretation of the Graham-Levin amendment at that time.

The bill then went to a House–Senate conference. At this time, the inapplicability of the jurisdiction-stripping provision to pending cases was so clear that the administration's allies in the House tried in vain to alter the language of the effective date provision to make the jurisdiction-stripping provision apply retroactively to pending cases, as it had in the original Graham amendment. I objected to this language, and it was rejected by the Senate conferees.

At CONGRESSIONAL RECORD page S14,258, I explained this history when the Senate adopted the conference report on December 21, 2005:

> Under the Supreme Court's ruling in *Lindh* v. *Murphy*, 521 U.S. 320, the fact that Congress has chosen not to apply the habeas-stripping provision to pending cases means that the courts retain jurisdiction to consider these appeals. Again, the Senate voted affirmatively to remove language from the original Graham amendment that would have applied this provision to pending cases. The conference report retains the same effective date as the Senate bill, thereby adopting the Senate position that this provision will not strip the courts of jurisdiction in pending cases.
>
> Let me be specific.
>
> The original Graham amendment approved by the Senate contained language stating that the habeas-stripping provision 'shall apply to any application or other action that is pending on or after the date of the enactment of this Act.' We objected to this language and it was not included in the Senate-passed bill.
>
> An early draft of the Graham-Levin-Kyl amendment contained language stating that the habeas-stripping provision 'shall apply to any application or other action that is pending on or after the date of the enactment of this Act, except that the Supreme Court of the United States shall have jurisdiction to determine the lawfulness of the removal, pursuant to such amendment, of its jurisdiction to hear any case in which certiorari has been granted as of such date'. We objected to this language and it was not included in the Senate-passed bill.
>
> A House proposal during the conference contained language stating that the habeas-stripping provision 'shall apply to any application or other action that is pending on or after the date of enactment of this Act.' We objected to this language and it was not included in the conference report.
>
> Rather, the conference report states that the provision ''shall take effect on the date of the enactment of this Act.'' These words have their ordinary meaning—that the provision is prospective in its application, and does not apply to pending cases. By taking this position, we preserve comity between the judicial and legislative branches and avoid repeating the unfortunate precedent in Ex parte McCardle, in which Congress intervened to strip the Supreme Court of jurisdiction over a case which was pending before that Court.

As a result, the language sought by the administration and its allies, which would have applied the jurisdiction-stripping provision to pending cases, was not included in the final version of the bill.

It was not until after we concluded the conference and the conference report passed the Senate on December 21,

2005, that Senator KYL placed a colloquy in the CONGRESSIONAL RECORD arguing that Section 1005 should be interpreted to retroactively strip the courts of jurisdiction over pending cases. At the same time, a number of other Senators placed statements in the CONGRESSIONAL RECORD stating their belief that the provision would not strip the courts of jurisdiction over pending cases.

Those statements, coming as they did after the conclusion of the conference and final action on the bill in both the House and the Senate, carry no more weight as legislative history than the statement that Senator KYL placed in the CONGRESSIONAL RECORD last week or any other after-the-fact statement in the CONGRESSIONAL RECORD. Both the contemporaneous legislative history and the language and structure of the Graham-Levin amendment itself demonstrate that this provision was not intended to, and did not, retroactively strip the Federal courts of jurisdiction over pending cases.

BLACK HISTORY MONTH

Ms. MIKULSKI. Mr. President, I rise today during Black History Month to celebrate and remember the rich history of the millions of African Americans who have made this country what it is today.

It is a time to honor leaders from across the country—some who are well known and others who are almost forgotten. It is a time to cherish the pioneers to give them the recognition they deserve and to preserve their names, faces, and stories for generations to come.

This Black History Month, we especially remember and mourn the recent loss of two of the key players in the civil rights movement Rosa Parks and Coretta Scott King.

In October, we said goodbye to the ''First Woman of Civil Rights,'' Rosa Parks. When Ms. Parks refused to give up her seat on a city bus in Montgomery, AL, in 1955, we know that a movement had already begun, but she poured fuel on the fire—inspiring the historic Montgomery bus boycott. She refused to give up her seat to a White man because she was tired—tired of being treated like a second-class citizen, tired of being forced to move because someone else decided they deserved to sit more than she did. And she became a model and a hero for me and generations of Americans looking to make our country truly the land of the free.

And then we just lost another icon. Not only was Coretta Scott King married to Dr. Martin Luther King Jr., but she was a pioneer with her own voice in the civil rights movement at a time when women were not often recognized for their own talents and merit. She was resolute, but she was feisty—someone after my own heart. She founded the King Center for Nonviolent Social Change and saw to it that the center became deeply involved with the issues that she believed breed violence—hunger, unemployment, voting rights and racism. And when her husband was tragically shot, she comforted a nation that was torn apart. She is the reason we have a national holiday that honors Dr. King.

While we remember the lives and deeds of Rosa Parks, Coretta Scott King, and countless others, we need to honor their memory not just with words, but with deeds. We need to reexamine what this country must still do to ensure equality every day. We need to evaluate the work we still need to do to guarantee that African Americans are not left behind when it comes to the issues that matter.

This Black History Month, I am still concerned and dedicated to fighting for the issues that matter to African Americans. We must make higher education more affordable for families. We must fight for adequate health care. We must fight to keep our neighborhoods and communities safe. We must fight to make sure the needs of Hurricanes Katrina survivors are not forgotten.

The cost of college tuition has been skyrocketing. It is putting stress on the families and students who have to struggle just to be able to pay their bills. That is why I have introduced legislation to create a tuition tax credit to families and to students who pay for their own tuition. This legislation would offer a tax credit of up to $4,000 a year per student to help them with the cost of the education they deserve. America needs our young people to know that they will not be limited by the size of their wallet to follow their big dreams.

I also want to assure African Americans that they are not limited in the health care they receive because of spartan or skimpy funding for the health issues that affect them most. That is why I teamed up with Congresswoman STEPHANIE TUBBS JONES in the Uterine Fibroids Research and Education Act of 2005, to double fibroid research funding and to launch an education campaign for patients and physicians. Uterine fibroids are a terrible, painful ailment that plague mostly African-American women. Fibroids affect the entire family—not only the woman who has to endure them but also those who love her and who hate to see the lady they love in so much pain. They have gone ignored for too long. We need to fight for the resources to find the cause, to find better treatments, and hopefully to find a cure for this devastating disease so that women and families don't have to deal with this pain in their lives.

Families also want to know the neighborhoods they live in are safe. The number of gangs nationwide and in my own home State of Maryland has been rising. Families don't want to have to worry about gang violence in their streets. That is why in Maryland I have helped launch a statewide antigang initiative that I hope can serve as a model for the country. This initiative will not only go after the bad guys through suppression and enforcement, but it will offer prevention and intervention efforts to help the good kids in the communities who are trying so hard. Mothers and fathers shouldn't have to worry about losing their children to gang violence in their neighborhoods, and that is why I am going to continue to give help to our communities to protect themselves.

We need to offer protection to the survivors of Hurricane Katrina in the gulf coast communities because the Federal Government really let them down. I know the African-American community feels very prickly about this and feels abandoned. They should know that even though President Bush hires cronies and doesn't have competent people working for him, the American people haven't abandoned them. We are going to work to rebuild the communities in Louisiana. We are going to get the survivors housing and jobs and health care. We are going to open the schools. We are going to stick with them, and we are going to fight for them.

So this year during Black History Month, I honor the memories of the great leaders who have come before us with my commitment to fighting for these important year-round issues. And I am going to do it not just with words, but with deeds. I urge you all to join me.

ADDITIONAL STATEMENTS

IN RECOGNITION OF DR. ROBERT W. GORE

• Mr. CARPER. Mr. President, today I rise to recognize the lifetime of accomplishments of Dr. Robert W. Gore, who was recently inducted into the National Inventors Hall of Fame.

In 1957, during his sophomore year at the University of Delaware, Bob Gore came up with the idea of using polytetraflouroethylene, PTFE, to insulate wire. Little did he know how this seemingly simple idea would impact everything from supercomputers to Arctic exploration.

In 1958, Bob's parent's, W.L. ''Bill'' Gore and his wife Genevieve, began W.L. Gore & Associates in the basement of their Delaware home. Bill was a research chemist at DuPont and, based on Robert's idea, developed and patented a process for insulating wire with PTFE.

Bob Gore went on to graduate from the University of Delaware 2 years later and joined his parents in developing and expanding their home business. After an order for 7½ miles of insulated cable from the city of Denver, W.L. Gore & Associates opened their first manufacturing plant in Newark, DE, in 1961.

In 1969, insulated cables from W.L. Gore & Associates were used during the